

Response Form

Partial Review of the Core Strategy for the Royal Borough of Kensington and Chelsea with a focus on North Kensington

Development Plan Document policies

All representations **must** express a view regarding the soundness or legal compliance of a planning policy. If the representation does not comment on soundness or legal compliance, or deal with how a policy can be altered to make it sound the representation will **not** be valid.

Name: Jeff Field

Company/Organisation: Jones Lang LaSalle

Representing: Clients with interest in subterranean development

Please complete the form and email it or send it to:

The Executive Director of Planning and Borough Development
f.a.o The Policy Team
The Royal Borough of Kensington and Chelsea
The Town Hall,
Hornton Street,
London W8 7NX

Email address: planningpolicy@rbkc.gov.uk

Publication Stage Representation Form

To be “**sound**” the contents of a local plan should be POSITIVELY PREPARED, JUSTIFIED, EFFECTIVE and consistent with NATIONAL POLICY.

“**Positively prepared**” means that the planning policy needs to:

- be prepared based on a strategy which seeks to objectively assess development and infrastructure requirements, including those of neighbouring authorities where it is reasonable to do so.
- It must also be consistent with achieving sustainable development.

“**Justified**” means that the planning policy must be:

- founded on a proportional evidence base
- the most appropriate strategy has been selected when considered against the reasonable alternatives.

“**Effective**” means that the planning policy must be:

- deliverable over its period
- based on effective joint working on cross – boundary strategic priorities.

“**Consistent with National Policy**” means that the planning policy should enable the delivery of sustainable development in accordance with the guidance contained within the National Planning Policy Framework (NPPF).

It must also be **legally compliant** which means that the planning policies have been prepared in accordance with legal and procedural requirements.

State planning policy or paragraph number to which you are referring

Proposed Policy CL7

Yes

No

Do you consider the planning policy to be sound?

Please tick box as appropriate

If you have selected YES and you wish to support the soundness of the planning policy, please give your reasons below. Please be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

please attach additional pages as required

If you have selected NO to the planning policy being sound do you consider the planning policy to be unsound because it is not:

Positively prepared

Justified

Effective

Consistent with national policy

Please give details of why you consider the planning policy to be unsound and / or suggest changes as to how it could be made sound. Please make it clear which paragraph number or Policy box number you are commenting on.

Please refer to attached policy representation.

Please attach additional pages as required

Yes

No

Do you consider the Planning Policy Document to be legally compliant?

Please give the reasons for your choice below and be as precise as possible. Please make it clear which paragraph number or Policy box number you are commenting on.

We consider the Planning Policy Document to be legally compliant.

please attach additional pages as required

Yes

No

Do you wish to appear at the Examination on any of these matters?

Please specify on what matter

Soundness of proposed Policy CL7



The Executive Director
Planning and Borough Development
FAO The Policy Team
Royal Borough of Kensington & Chelsea
Town Hall
Hornton Street
London W8 7NX

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3rd September 2013

Dear Sir,

**Representations – Partial Review of Core Strategy – Policy CL7
Basements – Publication Planning Policy, July 2013**

We write in connection with the above, which follows on from the public consultation exercises that were undertaken in December 2012 and March 2013. We act for a number of clients who bring forward basement developments within the Royal Borough of Kensington and Chelsea. We submitted representations at those earlier stages.

The purpose of this current consultation is to receive responses from the public as to whether proposed Policy CL7 is legally compliant and sound. This Representation is focused on the soundness of the proposed policy.

Paragraph 182 of the National Planning Policy Framework (NPPF) sets out that a local planning authority should submit a plan for examination that it considers to be 'sound'. The plan policy should meet the following criteria:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

In our previous Representations, we stated that proposed Policy CL7 would not meet any of the above criteria. For the record, we attach a copy of our Representations submitted on 30 January and 1 May 2013. All of the points made continue to apply to proposed Policy CL7 as published in July 2013.

Proposed Policy CL7 remains unchanged from that set out in March 2013, despite consultation responses opposing the strict policy approach when compared to the first draft published in December 2012.

We have examined proposed Policy CL7 together with the text contained in the publication document and we raise the following objections in relation to its soundness.



Core Strategy Review Assessment

This section assesses whether the plan policy is:

1. Positively prepared

The NPPF considers a plan policy to be ‘positively prepared’ when it meets “*objectively assessed development and infrastructure requirements*”.

In our previous Representations we drew attention to the Borough’s requirement to achieve 600 houses per annum from 2011/12, as set out in the London Plan and then reiterated in Core Strategy Policy CH1. This is a ten year target, to be delivered until 2027/28, unless reviewed earlier. The previous London Plan target was 350 units per year, for a plan period from 2007/8 to 2017/18.

Referring to the above figures, the 2012 Annual Monitoring Report (AMR) comments that the Borough benefits from a very healthy housing supply as planning permissions for new residential units “*have increased year on year and exceeded the target set in the London Plan of 350 units for 2009/10 and the higher target of 600 units since August 2011*” (paragraph 10.7).

However, a smaller number of permissions have been completed. The AMR concedes that only 175 new units were built in 2010/11 and 102 in 2011/12, although more are expected to be delivered in the coming years (there were 1,756 residential units at implementation stage at the end of March 2012).

The data outlined above demonstrates how the figures reported in a housing trajectory can be misleading. Although the Borough has a healthy supply of residential approvals, its rate of completions has been unable to keep up with the rate of permission. As new permissions are granted, the number of residential units being implemented at the moment will not be able to bridge the gap.

Table 1 below illustrates the rate of permissions against the rate of completion as shown in the AMR.

	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Net Residential Approvals	409	368	485	540	783	860
Net Residential Completions	171	132	253	324	175	102

Table 1 – AMR, Table 10.1: Residential Approvals and Completions 2006-2012 (1 April – 31 March)

Housing Demand

The AMR acknowledges that “*however many houses are built we cannot begin to meet the high demand either for private sale or for ‘affordable’ homes in the Borough*” (paragraph 10.1). As a result, the aim of the Core Strategy is to deliver housing diversity rather than fully satisfy housing demand.

The Borough’s unique built environment attracts a very high number of residents and investors, and a large proportion of these will be looking for prime residential units with significant floorspace.

The Core Strategy stipulates that the Borough is characterised largely by flats, circa 80% of all residential dwellings in 2009, and that 70% of the housing stock is comprised of small units with one or two bedrooms (paragraphs 2.2.33 and 34.3.55).

However, paragraph 35.3.10 notes in relation to housing mix that “*over the next 20 years, the size of new market housing likely to be required in the Borough is 20% one and two bedroom units and 80% three and four or more bedroom units*”.

The above evidence demonstrates that there is a mismatch between housing supply (small units, mainly in the form of flats) and demand for larger units (usually houses rather than flats) and this must be taken into account when formulating housing policies. Paragraph 47 of the NPPF states that “*To boost significantly the supply of housing, local planning authorities should [among other things] use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework (...)*”.

It is acknowledged that the full demand for housing in the Borough cannot be satisfied and that the Core Strategy cannot impact directly on the completion rate. **Nonetheless, Core Strategy policies can address the demand for larger units by adopting policies that do not hinder their delivery or development.**

Market Response

An important part of the housing demand has recently focused on subterranean development. The 2010 Core Strategy stipulates: “*over the last five years, there has been a 70% increase in applications for subterranean developments, with over 200 planning applications submitted in 2008*”. This is due to the specifics of the local built environment which is largely historic in character, densely built and with very high land values. Roof or rear extensions are often impossible, and subterranean development is often the only answer to improving existing properties, without affecting the appearance of Conservation Areas.

As the costs associated with moving in London continues to rise, subterranean development is often the only realistic way to add much needed space to an existing home. Many families who have lived in the Borough for a number of years cannot afford to buy a new house locally, but they could afford to extend their existing home. Subterranean development keeps growing families and communities in the Borough, rather than pushing them out of London or to other boroughs.

The 2013 Basements Development Data report, published in support for this particular consultation exercise, sets out the most relevant figures for basement development. Table 2 above provides evidence that the number of ‘subterranean’ applications has been steadily increasing since 2001, with a slight dip in 2009 possibly linked to the economic recession. Particularly, there was a significant increase of in 2012 when 307 cases were registered against 186 registered in 2011.

The table indicates that 80% of the applications registered between 2008 and June 2013 were approved, demonstrating that the large majority of the proposals are in line with planning policies.

	2008	2009	2010	2011	2012	2013 (11 June 2013)	Average (2008 - 2012)	Total (2008 - 11 June 2013)
Permissions Granted	204	121	150	132	242	77	170	926
Permissions Refused	17	10	14	25	53	23	24	142
Cases Withdrawn	41	28	43	63	82	0	51	257
Cases Pending	-	-	-	-	-	66		66
Cases Registered	186	129	182	186	307	166	198	1,156

Table 2 – Basements Development Data, Table 2: Planning Data for applications with a basement element.

Table 2 does not take into account basement extensions that can be carried out as part of permitted development rights. The Council has only data from commencement of work notifications to Building Control, which does not include those residents who used private companies. Even these potentially incomplete figures show that a marked increase in the notifications in 2011 and 2012, as shown on Table 3 below. This is in line with the trend identified in the above paragraphs.

Year	“commencement of work” notifications
2008	34
2009	30
2010	28
2011	60
2012	96

Table 3 – Basements Development Data, Table 2: Planning Data for applications with a basement element.

Basements that are well designed can provide comfortable day-lit rooms, with natural ventilation and external access, as extensions to the living spaces at upper levels, providing unique work places and spacious family rooms. The increased number of basement applications illustrates the need and desirability of this type of low impact extensions.

The majority of permissions for subterranean development relate to one level basement proposals, the number of two or more levels basement proposals amounting to 6% of the total permissions. However, there is also a marked increase in these applications which further demonstrate the demand for very large residential floorspace in the Borough.

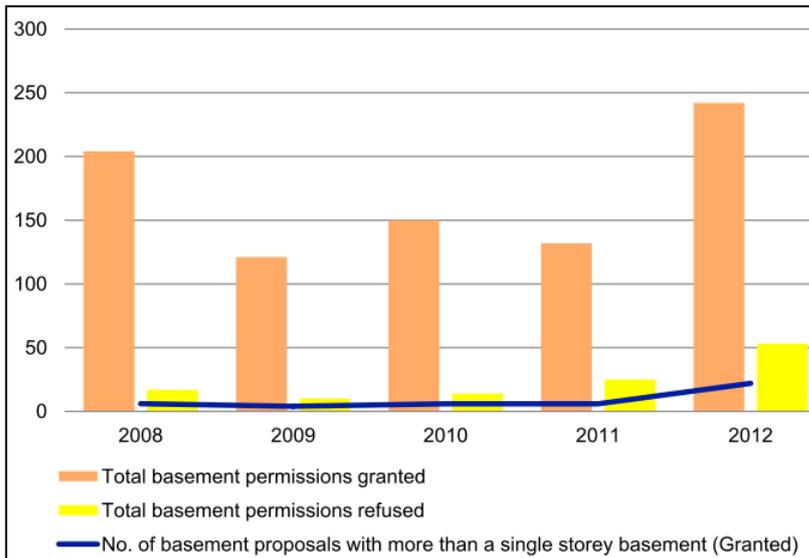


Image 1– Basements Development Data, Chart 3 Planning data including more than a single storey basement.

The NPPF requires planning authorities to “identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand” and to “positively seek opportunities to meet the development needs of their area” (paragraphs 50 and 14).

The evidence from the Basements Development Data demonstrates an objectively assessed requirement for basement extensions. It also proves that part of the demand for larger residential units has taken the form of demand for subterranean development. This increasing requirement needs to be addressed positively rather restricted.

It is noted that the Core Strategy cannot possibly satisfy the full demand for housing in the Borough. Although the high demand for larger accommodation cannot be fully met, it should be positively addressed in the relevant policies. By reducing the permitted size and extent of basement proposals, proposed Policy CL7 does not take into account all the evidence available on housing requirements in the Borough.

The data that supports this Representation is publicly available and has been extracted from the London Plan, the Core Strategy, the AMR and the Basements Development Data. It is considered that this data can be treated as “objectively assessed need for market housing” as required by paragraph 47 of the NPPF.

It is concluded that proposed Policy CL7 is not sound, on the basis of its failure to take into account the full housing evidence and to address the complexity of the Borough’s housing demand.

2. Justified

Under NPPF policy, a plan policy is ‘justified’ when it is “the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence”.

Section 1 above demonstrates that proposed Policy CL7 has not taken into account the full extent of the housing demand in the Borough. Therefore, the strategy adopted is not based on 'proportionate evidence' leading to the Council not having explored all reasonable alternatives.

Proposed Policy CL7 seeks to merge the policy requirements for subterranean development set out in adopted Policy CL2 and the Subterranean Development SPD. However, it takes a stricter stance on garden coverage (point 'a') and number of storeys (point 'b').

Having reviewed the evidence on housing demand at Section 1 of this Representation and the evidence base produced for these public consultation exercises, it is considered that the most reasonable alternative to proposed Policy CL7 is a policy that:

- **Maintains the same stance of policy CL2 on number of storeys (no limitation); and**
- **Adopts the Baxter's Basement Report recommendation in terms of maximum garden coverage (75%).**

Among all reasonable alternatives, this is strategy that will allow the current provision of large accommodations to continue thus meeting local housing demand and addressing a number of housing issues as set out below.

The Borough faces increasing demand for large houses in a context of limited land supply and a densely developed built environment. The support of large units helps make the Borough attractive.

Housing Content

The 2009 Strategic Housing Market Assessment states that the percentage of flats in the Borough was 82.5% compared to 48.3% in Greater London and 19.4% in England as a whole (paragraph 2.24). Despite the large supply of flats, the Borough is considered to provide a unique built environment for large units in central London and will keep on experiencing high levels of demand for these types of accommodation.

Indeed, the Assessment makes reference to the Borough's 'super prime', high price housing market. It states that *"demand for super-prime properties is set to increase and the supply of such properties is predicted to shrink. This indicates there is potential for unmet demand in this sector"*. Furthermore, in the request for exemption from the 2013 extension of permitted development rights, the Council states that *"Kensington and Chelsea contains much of London's prime housing market" and that "there is a strong and seemingly insatiable demand for housing in the Borough"*.

The presence of super prime units in new developments is currently being reviewed by the Council in the Housing Issues and Options Consultation, in order to avoid future instances where very large units may dominate a proposed housing mix thereby reducing the potential number of dwellings that could be provided.

The demand for additional new large units could be tempered if private owners were allowed to deliver the desired floorspace increases within their properties. If existing owners did not seek larger units across in the Borough, they would partially ease the pressure to deliver large units in new developments and develop on Greenfield land. **A strategy that meets the demand of prospective housing occupiers**

through existing housing stock is considered to be reasonable and a more sustainable option when compared with satisfying demand by building new units.

Basement development can provide additional floorspace without increasing the building footprint or significantly reducing garden size. For new build design the reduction in footprint relative to the number of stories, scores points in the Ecology Section of the Code for Sustainable Homes.

Housing Need

The 2012 Strategic Housing Market Assessment Update indicates a “*very large income gap between the social rented sector and market rent*” with need for increased provision of intermediate housing. Furthermore, 14.1% of all (non-student) households live in unsuitable housing. **By delivering larger units as part of basement developments, new developments could instead seek to meet the above housing needs and no pressure will be added on the housing stock deficit.**

In response to our March 2013 Representation, the Council commented that “*the policy is not putting a stop to basements but proposing a reasonable scale of development. The proposed policy would allow people to extend their homes but help minimise their impacts*”.

The demand for large 2 level subterranean development is relatively small compared to one storey basement proposals. Resisting proposals for more than a subterranean level is deemed excessive compared to the impact that these cases would have on the Borough’s built environment.

As basement works can be undertaken with minimum disruption to neighbouring residential amenity, proposed Policy CL7 is not the most reasonable strategy that can be applied to basement development.

Inevitably, all building works can cause nuisance but local authorities can enforce working hour limits and other controls through their planning policies. It is considered that neighbouring residential amenity can be successfully protected through policy requirements. For instance, the Borough has been increasingly using its substantial powers to control noise generated by building works, effectively mitigating noise levels on all basement sites.

The Arup Scoping Report highlights the potential risks to the existing and neighbouring buildings if the development is poorly surveyed, managed and constructed (all which can be controlled by planning policies). The report concludes by saying that successful subterranean development has been achieved in the Borough for many years.

The attached Basement Best Practice Guidance provides an overview of how subterranean development can be carried out with minimal disruption to neighbouring properties and surrounding built environment.

Proposed Strategy

Although proposed Policy CL7 is not aimed at preventing basement applications, its strict approach will decrease the number of large schemes put forward for subterranean development. The unintended consequence of this approach will be to deprive the Council’s housing offer of valuable large residential units, as set out in the above paragraphs.

The proposed new policy adopts the same approach to large and small houses. But although owners of houses with very large gardens may be able to create the space they require under the new policy, the vast majority of residents will find they cannot justify the cost of creating a restricted living space.

Curbing housing supply in a Borough under pressure to meet increasing housing demand is not a reasonable strategy. **The strategy we put forward in this Representation provides enough flexibility to deal with large development proposals that meet housing demand.** This is in line with NPPF that requires planning authorities to plan for a mix of housing based on current and future demographic trends and the needs of different groups in the community (paragraph 50).

We reiterate that basement development is often the only option for growing families to remain in the Borough. Existing families and communities should not be penalised for wanting to improve their family living standard. The effect of moving house impacts families both financially and emotionally.

As stated above in the section, it is considered that the most reasonable alternative to proposed Policy CL7 is a policy that:

- **Maintains the same stance of policy CL2 on number of storeys (no limitation); and**
- **Adopts the Baxter's Basement Report recommendation in terms of maximum garden coverage (75%).**

Considering the benefits delivered by the proposed strategy, this is considered to be the most appropriate approach to subterranean development in the Borough.

It is concluded that proposed Policy CL7 is not justified, as an alternative strategy can be formulated that better responds to local housing needs and does not impact on residential amenity.

3. **Effective**

The definition of 'effective' means that the policy achieves its goal. The stated objective is to reduce the potential amenity effects of basement development. However, in our view, there is significant space between the construction of the policy and its desired aim. A more flexible approach with good supporting guidance and implementation would be much less intrusive than a restricted policy approach without good guidance.

At Attachment 1, we set out Best Practice Guidance for basements, which is adopted by our clients. With this practice encouraged throughout planning conditions or informatives we are convinced that a more flexible policy approach would be effective in allowing the Borough to meet and deliver its wider policy goals.

4. **Consistent with national policy**

Under the NPPF, a plan policy which is 'consistent with national policy' *"should enable the delivery of sustainable development in accordance with the policies in the Framework"*.



Paragraph 7 of the NPPF sets out that in order to be sustainable “*development planning should achieve:*

- ***an economic role;***
- ***a social role; and***
- ***an environmental role.”***

In May 2013 the Government has relaxed permitted development rights to build larger extensions, to help relieve the shortage in housing. This enables families to make their existing homes large enough to meet their requirements. In addition, it seeks to boost the construction industry and help the economy. Moreover, by restricting hard working families from creating their dream home in the Borough, there is a risk they would leave and take their skills and investment out of the area. These are often growing families who use and contribute to local amenities such as shops, restaurants, supermarkets and coffee shops. It should also be noted that the basement industry provides jobs for a large number of people and generates fees for many local specialist consultants.

Proposed Policy CL7 is therefore contrary to the drive for economic and social benefits which are outlined in paragraph 7 of the NPPF.

Under its environmental role, development planning should contribute to protecting and engaging and built and historic environment. It is considered that existing Policy CL2 complies with these requirements and that there is no need to restrict its extent. Specifically, subterranean development results in minimal changes to the appearance and character of the urban environment.

Basements create a good stable structural base, often providing old buildings a proper foundation for the first time, capable of supporting heavy loads. By combining foundation design with the provision of habitable space, the extra depth of structure provides the building with greater ability to cope with climate change effects in the soil, such as shrinkage or tree roots.

The existing stock of period town houses was not designed to provide adequate space for 21st century family living. On the contrary, basements can aid in the creation of desirable, sustainable homes, providing greater flexibility and adaptability of space thus extending the practical life of the building.

The proposed restriction of basement developments does not consider the full housing evidence available, in breach of NPPF paragraph 158 requirements. The paragraph states that “*each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals*”.

The significant rise in the number of applications for basement developments is a signal of demand and need for larger family homes. Paragraph 14 sets out that “*local planning authorities should positively seek opportunities to meet the development needs of their area*”. The statistics demonstrate the development needs of the Borough and to restrict these development needs would be contrary to paragraph 14.

Finally, we re-iterate the sentiments of paragraph 187 of the NPPF that local planning authorities “*should look for solutions rather than problems, and decision-takers at every level should seek to approve applications and should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.*”

In light of the above, it is not considered that proposed Policy CL7 is in line with the NPPF.

Conclusions

Proposed Policy CL7 is not considered 'sound' as this Representation has demonstrated it not to be:

- a) Positively prepared;
- b) Justified;
- c) Effective; and
- d) Consistent with national policy.

Planning policy and housing market evidence highlight significant housing demand in the Borough and growing appetite for large units. Basement proposals should be seen as a tool to contribute to housing supply in a sustainable manner, delivering floorspace increase through modification of existing stock and allowing new development proposals to meet diverse housing needs.

The proposed restriction to basement proposals will hinder the provision of large homes, against local demand. This is contrary to the principle of sustainable development at the basis of the NPPF.

A policy that includes the requirements of adopted Policy CL2 and of the Subterranean Development SPD is deemed to be the best strategy for determining subterranean development proposals, as stated in previous Representations. Specifically, the following amended should be made to proposed Policy CL7:

- Point 'a' should be amended to adopt the maximum 75% garden coverage proposed by the Baxter's Basement Report ; and
- Point 'b' should be deleted imposing no restrictions on the number of basement levels.

Yours faithfully,



Jones Lang LaSalle Ltd

Attachment 1 - Basement Best Practice Guidance

The range of construction methods available, the different ground conditions present and the range of issues and mitigation measures which may be applicable for any potential subterranean basement application are numerous and in each case would be site-specific.

Despite this, it is possible to identify a series of 'best practice' standards which could be better suited to achieve the main stated goal of the proposed policy – controlling disruption from the construction of basements.

The policy as currently drafted would miss many of these items and could therefore fail in its stated goal. A small poorly planned and constructed basement will cause far more disruption than a large well planned and constructed basement.

The table below lists lists the principles of best practice, comparing the way they are dealt with under existing Policy CL2 and how they could be better integrated in the policy.

Table 1 – Basement Best Practice, principal issues

	Policy CL2	Best Practice Amendments
Surface water flow and flooding	A Flood Risk Assessment (FRA) is required, which covers the application site.	If the main concern is about the cumulative effect of basements, then a requirement could be put forward that the FRA takes into account the number of basements on the street. This could be supplemented with a public register of all basements built or planning submitted for in London, including depth details. The use of a water recycling system under the 1m of soil could also be proposed, reducing the pressure placed on the combined storm water and sewer network.
Subterranean (groundwater) flow	No requirements.	Applicants could submit a hydrology report based on ground investigations, including exploratory boreholes which can assess the water level and flows across the site. This would ensure that the information is then taken into account at the design stage.
Ground movement	No requirements.	Damage Risk Assessments to be prepared by a qualified professional to ensure that the proposed Construction Method Statement would not lead to damage in neighbouring properties. Minimum forecast standards could be set as is

		the case with most party wall awards – allowing for an amber movement of 7mm and red movement of 12mm.
Site monitoring	Structural engineer to monitor works.	Extend this to include an RICS surveyor on weekly visits.
Effects upon neighbours	Prepare Construction Traffic Management Plans (CTMP) at an early stage.	<p>More, upfront analysis and submission of technical information.</p> <p>Introduce a planning condition requiring projects be implemented in accordance with an approved programme and start date.</p> <p>The rationale being that the developer will need to be ready to start and putting more emphasis on getting the necessary investigations organised and approved in the planning stage. This could also aid the Council to manage the number of projects taking place on any one street – avoiding the cumulative effect of basements being developed in close proximity.</p> <p>Greater emphasis could be given within the CTMP to avoid semi-permanent skips in public street and a greater use of innovative ways of removing soil during the day, whilst retaining the street scene in the evenings.</p> <p>To control noise and dust nuisance, building sites should be encouraged to fully wrap the house in hoarding.</p>
Environmental issues	Policy fails to take account of the life of the proposed building against the life of the existing building.	Policy could take account of the environmental benefits of basements due to the excellent insulation properties from the soil and the large amount of concrete used in their construction. Initiative could be put forward to encourage spoil sharing strategies, whereby the soil is re-used for landscaping on large London schemes.
Professionals / Contractors	Generic 'Considerate Constructors' scheme.	<p>The establishment of a Borough supported / industry funded, local constructors group to include Architects, Contractors/Builders and other professionals.</p> <p>There could also be an advisory board which</p>

		<p>brings together the local Residents' Associations. The group would be subject to very tight working practice rules which ensure that all projects are conducted in manner which is 'neighbour-friendly'.</p> <p>Should any members breach the rules, he would be required to leave the scheme and therefore be unable to be part of a site within the Borough.</p>
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